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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

Indiezone, Inc., a Delaware corporation, and ) **Case No. CV13-04280 VC**  
 EoBuy, Limited an Irish private limited company, )

***Plaintiffs,***

vs.

Todd Rooke, Joe Rogness, Phil Hazel, Sam Ashkar, )  
 Holly Oliver and U.S. Bank, collectively the ***RICO Defendants;*** )  
 Jingit LLC., Jingit Holdings LLC., Jingit Financial Services LLC., )  
 Music.Me, LLC., Tony Abera, John E. Fleming, Dan Frawley, )  
 Dave Moorehouse II, Chris Ohlsen, Justin James, )  
 Shannon Davis, Chris Karls in their capacities as officers, )  
 agents and/or employees of the Jingit LLC., )

***Defendants in Negligence, and Aiding/Abetting,***

Wal-Mart, General Electric, Target, DOE(s) and ROE(s) )  
 through 10, ***Defendants in Negligence Secondary*** )  
***-Vicarious Infringement,*** )

***Defendants.***

**MEMORANDUM OF LAW IN SUPPORT OF COUNSEL FOR PLAINTIFF eOBUY  
 LICENSING LTD. AND PLAINTIFF'S REQUESTS FOR RECUSAL OF JUDGE VINCENT  
 CHHABRIA AND FOR REASSIGNMENT OF THE CASE PURSUANT TO 28 U.S.C. § 455**

## INTRODUCTION

Plaintiff eoBuy Licensing Ltd.,<sup>1</sup> and Plaintiff's Counsel respectfully move this Court requesting that your honor as presiding Judge in this matter recuse himself from any further involvement in this case. Plaintiff and Counsel also ask that the case be directed to the Administrative Judge for reassignment so as to have the new presiding judge hear renewed motions for errors in law on facts which have become evident, occasioned by a deep-seated favoritism engaging in conduct so antagonistic that has objectively made a fair judgment by the Court an impossibility.

The dominating issue on the matter of recusal in this case is whether your Honor has, by his actions when viewed objectively, ignored proof and denied Plaintiffs access to proof so as to present it to the Court in opposition to accusations of bad faith. By denying Plaintiffs access to those e-mails the Court has acted in manner reflecting a deep-seated favoritism.

The Court's antagonist approach and continued favoritism has disrupting the formal attorney client relationship at a stage of the proceeding for no compelling reason. Incredibly, the Court has refused to allow the record to be developed ignoring the claims of sabotage and constructively becoming the advocate for Defendants who are as alleged in the Complaint, acting in a criminal manner wrongfully in possession of Plaintiffs' property and the means necessary to defend themselves for the claims of bad faith. [DE 1.]

## BACKGROUND

In general, the underlying claims presented in this cause of action involve a challenge to the illegal use of intellectual property which by written agreement is the **exclusive property** of the California based tech companies Plaintiffs' eoBuy Licensing Ltd., and Indiezone.<sup>2</sup>

<sup>1</sup> Plaintiff's reference to eoBuy means and is intended to mean Eobuy Licensing Ltd. formerly Laraghcon Chauffeur Drive Limited ("Laraghcon").

<sup>2</sup> Despite the express language of the ownership assignment executed by Defendants Todd Rooke ("Rooke") and Joe Rogness ("Rogness"), former IndieZone work for hire employees for the Plaintiffs, where they agreed and expressly provided that the Plaintiffs' IP would be exclusively eoBuy's and Indiezone's, where all documents would be returned to the company upon their departure, the Court has already exhibited a dim view of the RICO claims including the theft of over 20,000 e-mails belonging to

1 The allegations claim<sup>3</sup> that by reason of *organized criminal activity* involving  
 2 specified unlawful activities pursuant to 18 U.S.C. §1961. Defendants are illegally in  
 3 possession of Plaintiffs' property. Plaintiffs have been damaged in their business and  
 4 property for a sum in excess of \$1,300,000,000. The loss in jobs and income to the state of  
 5 California and its citizens will be exponential and in excess of \$20,000,000,000 annually.

#### 6 PROCEDURAL HISTORY

7 On June 6, 2014, in response to Defendants' Rules 12(b)(6) and 17(b)<sup>4</sup> motions, your  
 8 Honor heard oral argument on pending Motions for standing and compelling arbitration.  
 9 On July 17, 2014, the Court granted dismissal of the named Plaintiff eoBuy Ltd., denied the  
 10 amendment to include eoBuy Ventures Ltd. and denied the request to correct the complaint  
 11 to include eoBuy Licensing Ltd. [DE 117.] The Court then ordered a hearing for sanctions  
 12 pursuant to 18 USC §1927, claiming that Plaintiff eoBuy and its Counsel have acted  
 13 improperly by presenting eoBuy Licensing Ltd. as the entity with capacity and standing to  
 14 sue.

#### 15 ARGUMENT

#### 16 DISQUALIFICATION IS REQUIRED BECAUSE JUDGE'S CHHABRIA'S 17 IMPARTIALITY MIGHT REASONABLY BE QUESTIONED

18 For the reasons that follow, Plaintiff eoBuy and its counsel respectfully claim that  
 19 the impartiality of the Court "might reasonably be questioned" in that the Court's recent  
 20 conduct goes far beyond favoritism and presents clear evidence of antagonist conduct  
 21 towards Plaintiff eoBuy and its Counsel.

22  
 23 plaintiffs and, despite not having a single denial of the allegations to measure against those claims, it is  
 24 apparent that the Court has ignored the Congressional intent of the RICO statute and prejudged the action  
 25 to the point where there is evidence suggesting a complete lack of impartiality and actual bias. [DE 32-2 at  
 26 pg. 3¶7.]

27 <sup>3</sup> DE. 1

28 <sup>4</sup> Notwithstanding any other provision of the law, Rule 17(b)'s application to the facts in this case  
 allows for the very circumstances as exists both standing as an unincorporated or de facto corporation  
 and capacity exists.

1 Section 455(a) requires a judge to “disqualify himself in any proceeding in which  
2 his impartiality might reasonably be questioned.” 28 U.S.C. §455(a). “The goal of section  
3 455(a) is to avoid even the **appearance of partiality**,” *Liljeberg v. Health Services*  
4 *Acquisition Corp.*, 486 U.S. 847, 860 (1988) (quotation marks omitted), and thus “what  
5 matters is not the reality of bias or prejudice **but its appearance**,” *Liteky v. United*  
6 *States*, 510 U.S. 540, 548 (1994). [Emphasis added.]

7 In other words, so long as a judge’s impartiality might reasonably be questioned,  
8 recusal is required “even though no actual partiality exists ....” *Liljeberg*, 486 U.S. at  
9 860 (quotation marks omitted).

10 The standard for assessing whether section 455(a) requires disqualification is thus  
11 “an objective one” that “involves ascertaining whether a reasonable person with  
12 knowledge of all the facts would conclude that the judge’s impartiality might reasonably  
13 be questioned.” *Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1991) (quotation  
14 marks omitted).

15 And, because of its “fact-driven” nature, analysis “must be guided, not by  
16 comparison to similar situations addressed by prior jurisprudence, but rather by an  
17 independent examination of the unique facts and circumstances of the particular claim at  
18 issue.” *United States v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008) (quotation marks  
19 omitted).

20 The test for disqualification is whether an average, reasonable person knowing all the  
21 circumstances would harbor doubts about the judge's impartiality. *Milgard Tempering, Inc.*  
22 *v. Selas Corp. of America*, 902 F.2d 703, 714 (9th Cir. 1990). “[T]he appearance of  
23 partiality is as dangerous as the fact of it.” *Conforte*, 624 F.2d at 881. “...a judge is under  
24 an affirmative, self-enforcing obligation to recuse himself *sua sponte* whenever the proper  
25 grounds exist.” *US. v. Kelly*, 888 F.2d 732, 744 (11th Cir. 1989).

26 In performing this analysis, the Court “must bear in mind that ... outside  
27 observers are less inclined to credit judges’ impartiality and mental discipline than the  
28 judiciary itself will be,” and in “a close case, the balance tips in favor of recusal.” *Id.* at

1 912, 914 (quotation marks omitted). The facts of this case would plainly lead a  
2 reasonable person to conclude that the Court's impartiality might reasonably be  
3 questioned where the Court advocates for the Defendants and, then actually encourages  
4 to increase the cost of the litigation in presenting evidence.

5 Putting aside the Court's rulings on the initial motions filed prior to the June 6,  
6 2014 hearing, in recognition of the fact that our Supreme Court holds that judicial  
7 rulings and the opinions formed by judges on the basis of non-hearsay facts<sup>5</sup> introduced  
8 in the course of proceedings "almost never constitute a valid basis for a bias or partiality  
9 motion ... there is the exception ["rare circumstances"] when in the face of a deep-  
10 seated favoritism or antagonism that [it] would make fair judgment impossible." *Liteky*,  
11 *510 U.S. at 555*; see also *Holland*, 501 F.3d at 1124.<sup>6</sup>

12 In this case Plaintiff has made a specific showing of "rare circumstances,"  
13 *Holland*, 501 F.3d at 1124 n.4, as evidenced by "deep-seated favoritism or antagonism."  
14 *Liteky*, 510 U.S. at 555. Proof exists in recasting to its own unreported standard for  
15 review the Plaintiff's Order to Show Cause without opposition on the core issue  
16 presented the return of 20,000 e-mails belonging to Plaintiffs so as to prove the claims of  
17 bad faith.

18 Incredibly, although the Court was told of the proof of the existence of Amdex  
19 Pte., the Court sua sponte denied Plaintiff eoBuy and their Counsel's request without a  
20 cogent reason for its actions. The Court's knee jerk reaction, summarily denying  
21 Plaintiff's access to its own property has caused needless hostility between the Court,  
22

23  
24 <sup>5</sup> This case is far worse, the Court has credited the most basic hearsay as can be presented and  
25 dismissed claims of a putative Plaintiff based on admitted misunderstanding of facts and the failure of  
26 Defendants to conduct any due diligence on the validity of Amdex Pte.

27 <sup>6</sup> Plaintiff eoBuy claims the motions for lack of standing were based on the feigned presentation of  
28 wholly insufficient legal theories, withheld evidence<sup>6</sup>, and nothing more than hearsay statements and,  
most importantly, the Court has ignored the standard of review mandated by the Federal Rules of  
Evidence Rule, 704 and Procedural Rules 12(b)(1) & (6) as well as ignoring the liberal standard to be  
applied under Rule 17(b).

1 Plaintiffs and its Counsel, leaving Plaintiff eoBuy or their Counsel without an  
2 independent means to contest the nature of the sanctions and the claimed bad faith.

3 And, although not relevant to the analysis of the Court's subsequent favoritism and  
4 antagonistic conduct, Plaintiff and their Counsel claim the proper disposition of the June 6,  
5 2014 motions required the Court to accept Plaintiff's explanation and reject Barrister  
6 Walker's statements as both hearsay and conjecture.<sup>7</sup>

7 Until such time as a hearing could be held on the issue of standing based on disputed  
8 facts [even accepting the hearsay nature of them], dismissal of the Plaintiff eoBuy was  
9 improper.

10 What's more, hold a hearing which requires proof of the very same issues is clear  
11 proof that there was and is a lack of neutrality and judicial temperance considering the  
12 disadvantage to Plaintiff and its Counsel not having access to matters occurring in  
13 Singapore in 2007 and 2008, as well as the 20,000 missing emails.

14 Why not simply order the production of the documents? The failure to do so as  
15 applied under the objective standard displays such a high degree of preference so as to reach  
16 far beyond an appearance of impropriety to actual favoritism, displaying genuine  
17 antagonism, especially where the matter is being heard by the very bench who will rule on  
18 the evidence.

19 It cannot be overlooked the fact that this is a non-jury matter, and that your Honor  
20 will be deciding each and every substantive issue at the hearing. The favorable conduct,  
21 denying access to the 20,000 e-mails, is all telling of the outcome. What evidence will  
22 Plaintiff have in light of the Defendants having to come forward to even deny the existence  
23 that they have the e-mails and have withheld them from Plaintiffs.

24 And, "[w]hen the judge is the actual trier of fact, the need to preserve the appearance  
25 of impartiality is especially pronounced." *Mangini v United States of America, Department*  
26 *of the Interior, National Park Service*, Defendant 314 F.3d 1158 (9<sup>th</sup> Circuit) ; *Alexander v.*

27  
28 <sup>7</sup> Defendants move for dismissal of eoBuy pursuant to Rule 12(b)(6) where the Court should have rejected the declaration of Barrister Walker as hearsay under the standards of the Rule.



1 *Primerica Holdings, Inc.*, 10 F.3d 155, 163 (3rd Cir.1993) (noting special concerns about  
2 bench trials in considering judicial disqualification).

3 Our Supreme Court has noted the importance of "*ensur[ing] that our deliberations*  
4 *will have the benefit of adversary presentation and full development of the relevant facts.*"  
5 *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 542 (1986). [Emphasis added.]

6 Here, your Honor has recast the Order to Show Cause to a role not found in the law,  
7 giving the matter no room for deliberations which is precisely the situation for which 28  
8 U.S.C. § 455(a) was promulgated.

9 This is true for the reason that the factual claims set forth in the declaration of Mr.  
10 Fennelly were entirely consistent with his actions especially where no due diligence was  
11 offered to contradict his claims.

12 The entire theory adopted by the Court, except for the Court's admitted  
13 misunderstanding as to the status of Amdex Pte., as it improperly perceived it to be a non-  
14 existing entity, a fairly significant fact considering the legal analysis which would control  
15 the issue of standing, lacks a single reason to have occurred where Plaintiff eoBuy could  
16 simply have paid a fee and been restored to active status or presented itself in the name of  
17 Amdex Pte. or even Laraghcon Chauffeur Drive Limited ("Laraghcon"), or simply amended  
18 the complaint and taken cover under the status as an unincorporated or de facto corporation  
19 under Fed Rule 17(b).

20 Plaintiff and Counsel claims proof of the Court's favoritism in not affording them access  
21 to their own property [20,000 e-mails] is evident in all respects, establishing a lack of  
22 objectivity in the conclusion reached and displaying a complete lack of impartiality owing to  
23 judicial bias and, as intended, is to be antagonist to Plaintiff eoBuy and its Counsel.

24 How will Counsel proceed in arbitration and represent Plaintiff Indiezone with the  
25 execution of a decision which was premeditated by a clear lack of experience resulting in  
26 favoritism.

27 Most disturbing, the Court has expressed views on the veracity of Connor Fennelly  
28 and made completely unfounded and otherwise biased statements, finding facts and

1 involvement of Plaintiffs' counsel, Douglas R. Dollinger and offering a baseless ruling that  
2 Attorney Dollinger assisted/directed/participated Mr. Fennelly, who clearly did nothing  
3 wrong, in creating a sham corporation for the purposes of standing where the Court must  
4 now save face and not back down from its lack of judicial experience.

5 Incredibly, and even more persuasive of the outright bias and prejudicial conduct  
6 involving outright favoritism by the Court, was that upon inquiry by your Honor directed to  
7 Defense Counsel, Defense Counsel actually admitted that they had not conducted the due  
8 diligence to determine whether Amdex Pte. was or was not an entity which was the holder  
9 of the assets for eoBuy. Plaintiffs claim it was an active entity and supported their claims.  
10 Instead of weighing its place alongside Plaintiffs' claims the Court engaged in out of hand  
11 dismissal of its existence despite the Declarations it had before it.

12 The order for a hearing to determine the issue of sanctions by itself was designed to  
13 ignore the attorney client relationship so as to trigger injury between Counsel and Plaintiff  
14 eoBuy by eliminating Counsel's ability to work effectively with his clients. Consistent with the  
15 claim and unmistakably clear is that the need for a hearing at this stage of the proceeding is  
16 simply an act of favoritism intending to assist Defendants in the upcoming arbitration.

17 It is interesting to note not only was the remaining proceeding stayed by the Court,  
18 but the Court actually invited Defense Counsel to increase the cost to Plaintiff eoBuy and  
19 his Counsel by openly having Barrister Walker appear at a sanctions hearing fully knowing  
20 that a video-telephonic appearance would have saved money, time and provided the same  
21 judicial efficiency as a physical in person hearing would have had.

22 There can be little doubt that if Defendants do not fully establish that Plaintiff eoBuy  
23 or its Counsel were acting in bad faith, unreasonably or in a vexsioux manner, despite the  
24 lack of proof, the Court will be forced to tip its hand in favor of the Defendants having the  
25 need to justify such an unsound approach to conducting a hearing needlessly and increasing  
26 its cost by its attitude and abandonment of the standards required of it.

27 Under current case law, the totality of these circumstances supports recusal. *Liteky v.*  
28 *United States*, 510 U.S. 540, 546 (1994), reviewed the meaning of 28 U.S.C. § 455,



1 especially in view of the "massive changes" made in 1974. "[W]hat matters is not the reality  
 2 of bias or prejudice but its appearance. Quite simply and quite universally, recusal [i]s  
 3 required whenever 'impartiality might reasonably be questioned.'" 510 U.S. at 548.

4 Moreover, subsection (a) of § 455 "covers all aspects of partiality." 510 U.S. at 553,  
 5 n. 2. Justice Kennedy's concurrence in *Liteky* also made the point that recusal is mandatory  
 6 in cases involving these types of claims:

7 [T]he central inquiry under § 455(a) is the appearance of  
 8 partiality, not its place of origin... Disqualification is required  
 9 if an objective observer would entertain reasonable questions  
 10 about the judge's impartiality. If a judge's attitude or state of  
 11 mind leads a detached observer to conclude that a fair and  
 12 impartial hearing is unlikely, the judge must be disqualified.  
 13 Indeed, in such circumstances, I should think that any judge  
 14 who understands the judicial office and oath would be the  
 15 first to insist that another judge hear the case... and Section  
 16 455(a) . . . addresses the appearance of partiality, guaranteeing  
 17 not only that a partisan judge will not sit, but also that no  
 18 reasonable person will have that suspicion.

## 19 CONCLUSION

20 For the foregoing reasons, he your Honor should recuse himself from any  
 21 involvement in this matter.

22 Dated: August 4, 2014

23 **LAW OFFICES OF DOUGLAS R. DOLLINGER**

24 /S/

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